

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, *etc.*)
)
Plaintiff)
)
)
vs.) **Case No. 4:05-cv-00329-JOE-SAJ**
)
)
TYSON FOODS, INC., *et al.*)
)
Defendants)

**ANSWER AND AFFIRMATIVE DEFENSES OF
CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.
TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendants, Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. (collectively, “Cal-Maine”) in response to the Plaintiffs’ First Amended Complaint (“Complaint”) do hereby allege and state as follows:

I. NATURE OF THE CASE

1. The allegations in Paragraph 1 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine specifically denies that it can properly be grouped with the other defendants as “Poultry Integrators, ” that it has “thousands of farms throughout the Illinois River Watershed...,” that it generated “hundreds of thousands of tons of poultry waste” in the IRW or that it caused, or is responsible for, any alleged injury to the IRW. Cal-Maine denies any remaining allegations in Paragraph 1. Cal-Maine lacks sufficient knowledge or information to admit or deny any allegations relating to the other defendants in Paragraph 1.

II. JURISDICTION & VENUE

2. The allegations in Paragraph 2 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine denies the allegations in Paragraph 2. Further, neither Article 3, Section 2 of the United States Constitution nor any of the cited statutes vest any federal court with jurisdiction over any theory of “federal common law.” Additionally, jurisdiction over Counts 4, 6, 7, 8, 9, and 10 is specifically denied as it lies with the appropriate state agencies as dictated by Oklahoma law.

3. Cal-Maine admits that the Illinois River Watershed (“IRW”), including the lands, waters, and sediments therein, is situated, in part, in the Northern District of Oklahoma and in part in the State of Arkansas. The remaining allegations in Paragraph 3 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine denies the remaining allegations in Paragraph 3.

4. The allegations in Paragraph 4 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine denies the allegations in Paragraph 4 inasmuch as they relate to Cal-Maine. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 4 inasmuch as they relate to the other Defendants.

III. THE PARTIES

A. Plaintiff

5. The allegations in Paragraph 5 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine admits that Oklahoma is a sovereign state of the United States of America. It is further admitted that this action is prosecuted by the Attorney General in his capacity as *Parens Patriae*, on behalf of all citizens or

residents of Oklahoma. This defendant shows affirmatively that all citizens of Oklahoma are, therefore, plaintiffs. All potential jurors are also, therefore, plaintiffs. Accordingly, no issue in this action should be tried to a jury. To the extent further response is required, Cal-Maine denies the remaining allegations in Paragraph 5.

B. Defendants

6. The allegations in Paragraph 6 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 6.

7. The allegations in Paragraph 7 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 7.

8. The allegations in Paragraph 8 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 8.

9. The allegations in Paragraph 9 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 9.

10. The allegations in Paragraph 10 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 10.

11. The allegations in Paragraph 11 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required Cal-Maine admits that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. (collectively “Cal-Maine”) are Delaware corporations with their principal places of business in Jackson, Mississippi. It is admitted that Cal-Maine, in the past, engaged in “poultry growing operations” within the IRW to the extent that it owned a relatively small number of layer chickens which produced eggs which Cal-Maine marketed. Cal-Maine affirmatively states that it presently has no “poultry growing operations” in the IRW, and that it had no “poultry growing operations” in the IRW at the time this action was filed. The remainder of the allegations in paragraph 11 are denied.

12. The allegations in Paragraph 12 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine admits that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. (collectively “Cal-Maine”) are Delaware corporations with their principal places of business in Jackson, Mississippi. It is admitted that Cal-Maine, in the past, engaged in “poultry growing operations” within the IRW to the extent that it owned a relatively small number of layer chickens which produced eggs which Cal-Maine marketed. Cal-Maine affirmatively states that it presently has no “poultry growing operations” in the IRW, and that it had no “poultry growing operations” in the IRW at the time this action was filed. The remainder of the allegations in paragraph 12 are denied.

13. The allegations in Paragraph 13 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 13.

14. The allegations in Paragraph 14 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 14.

15. The allegations in Paragraph 15 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 15.

16. The allegations in Paragraph 16 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 16.

17. The allegations in Paragraph 17 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 17.

18. The allegations in Paragraph 18 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 18.

19. The allegations in Paragraph 19 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 19.

20. Paragraph 20 of the Complaint is a Plaintiff generated definition to which no response is required. To the extent a response is required, Cal-Maine denies that they can properly be grouped together with the other defendants as "Poultry Integrator Defendants."

21. Paragraph 21 of the Complaint makes no specific allegations of fact and therefore, no response should be required. To the extent this paragraph is construed to make some allegations of fact, those allegations are denied.

IV. FACTUAL ALLEGATIONS

A. The Illinois River Watershed

22. Cal-Maine admits that the IRW is located on the Oklahoma-Arkansas border, and that a portion of the IRW is located in Arkansas and a portion is located in Oklahoma. Cal-Maine lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 22.

23. Cal-Maine admits that the major tributaries within the IRW are: the Illinois River, the Baron (a/k/a Barren) Fork River, the Caney Creek, and the Flint Creek. Cal-Maine lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 23.

24. The allegations in Paragraph 24 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 24.

25. Cal-Maine admits that portions of the IRW have been and are used for recreational and wildlife propagation purposes and further that such recreational uses have been and are a substantial contributor to nutrients and “pollutants” in the waters of the IRW. Cal-Maine lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 25.

26. Cal-Maine admits that the Illinois River feeds into Tenkiller Ferry Lake. Cal-Maine lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 26.

27. Cal-Maine admits that portions of the IRW have been and are used for recreational purposes and further that these recreational uses have been and are a substantial contributor to nutrients and “pollutants” in the waters of the IRW. Cal-Maine lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 27.

28. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 28.

29. The allegations in Paragraph 29 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 29.

30. The allegations in Paragraph 30 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 30.

31. The allegations in Paragraph 31 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 31. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 31.

B. The Poultry Integrator Defendants’ Domination and Control of the Actions and Activities of Their Respective Poultry Growers

32. Cal-Maine admits that they are in the business of producing and selling chicken eggs. To the extent the allegations of this paragraph allege that Cal-Maine is “in the business of producing poultry and/or poultry products” within the IRW, the allegations are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 32.

33. Cal-Maine admits that it is intimately involved in and controls each stage of its operations in its company-owned facilities. To the extent this paragraph alleges that Cal-Maine has the same involvement with and control of production through independent contract growers, the allegations are denied. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 33.

34. Cal-Maine admits that it either raises its chickens itself or contracts with independent contract growers to raise its chickens. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 34.

35. The allegations in Paragraph 35 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations directed against it in Paragraph 35. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 35.

36. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 36.

37. Cal-Maine denies the allegations of paragraph 37 as they apply to it. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 37.

38. Cal-Maine admits that it owns its chickens. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 38.

39. Cal-Maine admits those allegations of paragraph 39 that are directed to it. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 39.

40. Cal-Maine denies the allegations in paragraph 40. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 40.

41. Cal-Maine admits that it periodically visits the operations of its independent contract growers to ensure that standards are maintained. The remainder of the allegations of this paragraph are denied. To the extent the allegations of this paragraph allege that Cal-Maine

has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 41.

42. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations Paragraph 42. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied.

43. Cal-Maine denies the allegations in paragraph 43. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 43.

44. Cal-Maine denies the allegations in paragraph 44. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 44.

45. Cal-Maine denies the allegations in paragraph 45. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 45.

C. The Poultry Integrator Defendants' Poultry Waste Generation

46. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 46.

47. The allegations in Paragraph 47 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 47.

D. The Poultry Integrator Defendants' Improper Poultry Waste Disposal Practices and Their Impact

48. Cal-Maine denies the allegations in paragraph 48. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 48.

49. Cal-Maine denies the allegations in paragraph 49. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 49.

50. Cal-Maine denies the allegations in paragraph 50. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 50.

51. Cal-Maine denies the allegations in paragraph 51. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 51.

52. Cal-Maine denies the allegations in paragraph 52. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 52.

53. Cal-Maine denies the allegations in paragraph 53. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 53.

54. Cal-Maine denies the allegations in paragraph 54. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 54.

55. Cal-Maine denies the allegations in paragraph 55. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 55.

56. Cal-Maine denies the allegations in paragraph 56. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 56.

57. Cal-Maine denies the allegations in paragraph 57. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 57.

58. Cal-Maine denies the allegations in paragraph 58. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 58.

59. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 59.

60. Cal-Maine denies the allegations in paragraph 60. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 60.

61. The allegations in Paragraph 61 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 61.

62. The allegations in Paragraph 62 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 62.

63. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 63.

64. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 64.

E. The Reason for This Lawsuit

65. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 65.

66. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 66.

67. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 67.

68. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 68.

69. Cal-Maine denies the allegations in paragraph 69 as they relate to it. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 69.

V. CAUSES OF ACTION

A. Count 1: CERCLA Cost Recovery – 42 U.S.C. § 9607

70. Cal-Maine hereby incorporates by reference, as though fully set forth herein, its previous responses to the allegations in the preceding paragraphs of the Complaint.

71. Cal-Maine denies the allegations in paragraph 71. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this

paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 71.

72. The allegations in paragraph 72 are too vague for Cal-Maine to properly prepare a response. Out of an abundance of caution, Cal-Maine denies the allegations in paragraph 72. To the extent the allegations of this paragraph allege that Cal-Maine has any operations within the IRW, the allegations of this paragraph are denied. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations directed against the other defendants in Paragraph 72.

73. The allegations in Paragraph 73 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 73.

74. The allegations in Paragraph 74 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 74.

75. The allegations in Paragraph 75 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 75.

76. The allegations in Paragraph 76 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 76.

77. The allegations in Paragraph 77 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 77.

B. Count 2: CERCLA Natural Resource Damage – 42 U.S.C. § 9607

78. Cal-Maine hereby incorporates by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

79. Cal-Maine lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 79.

80. The allegations in Paragraph 80 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 80.

81. The allegations of Paragraph 81 of the Complaint are too vague for Cal-Maine to properly respond. In addition, the allegations in Paragraph 81 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 81.

82. The allegations in Paragraph 82 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 82.

83. The allegations in Paragraph 83 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 83.

84. The allegations in Paragraph 84 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 84.

85. The allegations in Paragraph 85 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 85.

86. The allegations in Paragraph 86 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 86.

87. The allegations in Paragraph 87 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 87.

88. The allegations in Paragraph 88 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 88.

89. The allegations in Paragraph 89 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 89.

C. Count 3: SWDA Citizen Suit

90. Cal-Maine hereby incorporates by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

91. The allegations in Paragraph 91 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required and to the extent it relates to Cal-Maine, Cal-Maine admits receipt of the described letter. Cal-Maine lacks sufficient knowledge or information to admit or deny the remainder of the allegations in Paragraph 91.

92. The allegations in Paragraph 92 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 92.

93. The allegations in Paragraph 93 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 93.

94. The allegations in Paragraph 94 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 94.

95. The allegations in Paragraph 95 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 95.

96. The allegations in Paragraph 96 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 96.

97. The allegations in Paragraph 97 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 97.

D. Count 4: State Law Nuisance

98. Cal-Maine hereby incorporates by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

99. The allegations in Paragraph 99 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 99.

100. The allegations in Paragraph 100 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 100.

101. The allegations in Paragraph 101 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 101.

102. The allegations in Paragraph 102 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 102.

103. The allegations in Paragraph 103 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 103.

104. The allegations in Paragraph 104 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 104.

105. The allegations in Paragraph 105 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 105.

106. The allegations in Paragraph 106 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 106.

107. The allegations in Paragraph 107 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 107.

108. The allegations in Paragraph 108 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 108.

E. Count 5: Federal Common Law Nuisance

109. Cal-Maine hereby incorporates by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

110. The allegations in Paragraph 110 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 110.

111. The allegations in Paragraph 111 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 111.

112. The allegations in Paragraph 112 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 112.

113. The allegations in Paragraph 113 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 113.

114. The allegations in Paragraph 114 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 114.

115. The allegations in Paragraph 115 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 115.

116. The allegations in Paragraph 116 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 116.

117. The allegations in Paragraph 117 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 117.

118. The allegations in Paragraph 118 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 118.

F. Count 6: Trespass

119. Cal-Maine hereby incorporates by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

120. The allegations in Paragraph 120 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 120.

121. The allegations in Paragraph 121 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 121.

122. The allegations in Paragraph 122 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 122.

123. The allegations in Paragraph 123 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 123.

124. The allegations in Paragraph 124 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 124.

125. The allegations in Paragraph 125 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 125.

126. The allegations in Paragraph 126 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 126.

127. The allegations in Paragraph 127 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 127.

G. Count 7: Violation of 27A Okla. Stat. § 2-6-105 & 2 Okla. Stat. § 2-18.1

128. Cal-Maine hereby incorporates by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

129. The allegations in Paragraph 129 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 129.

130. The allegations in Paragraph 130 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 130.

131. The allegations in Paragraph 131 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 131.

132. The allegations in Paragraph 132 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 132.

H. Count 8: Violation of 2 Okla. Stat. § 10-9.7 and Oklahoma Administrative Code § 35:17-5-5

133. Cal-Maine hereby incorporates by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

134. The allegations in Paragraph 134 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 134.

135. The allegations in Paragraph 136 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 136.

I. Count 9: Violation of Oklahoma Administrative Code § 25:17-3-14

137. Cal-Maine incorporates by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

138. The allegations in Paragraph 138 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 138.

139. The allegations in Paragraph 139 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 139.

J. Count 10: Unjust Enrichment / Restitution / Disgorgement

140. Cal-Maine hereby incorporates by reference, as though fully set forth herein, their previous responses to the allegations in the preceding paragraphs of the Complaint.

141. The allegations in Paragraph 141 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 141.

142. The allegations in Paragraph 142 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 142.

143. The allegations in Paragraph 143 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 143.

144. The allegations in Paragraph 144 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 144.

145. The allegations in Paragraph 145 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 145.

146. The allegations in Paragraph 146 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 146.

147. The allegations in Paragraph 147 of the Complaint state conclusions of law to which no response is required. To the extent that a response is required, Cal-Maine denies the allegations in Paragraph 147.

VI. PRAYER FOR RELIEF

Cal-Maine denies that the plaintiff is entitled to the relief sought in its *ad damnum* including subparts (1) through (9) thereof. Cal-Maine denies that the plaintiff is entitled to any other relief, and Cal-Maine specifically denies that the plaintiff is entitled to a jury trial of any issue herein.

Cal-Maine denies each and every allegation of the Complaint to the extent not expressly admitted herein.

AFFIRMATIVE DEFENSES

Cal-Maine asserts the following defenses herein:

I. FIRST DEFENSE

The First Amended Complaint fails to state a claim upon which relief can be granted.

II. SECOND DEFENSE

This action is barred in whole or in part by the applicable statutes of limitation.

III. THIRD DEFENSE

This Action is barred by the doctrines of waiver and Estoppel.

IV. FOURTH DEFENSE

This action is barred by the failure of the plaintiffs to join indispensable parties.

V. FIFTH DEFENSE

All claims in the First Amended Complaint are barred by the doctrine of laches, unclean hands, and *in pari delicto*.

VI. SIXTH DEFENSE

To the extent that the Complaint seeks damages or injunctive relief with respect to “natural resources” owned by or held in trust for Indian Tribes, the Complaint must be dismissed due to the Plaintiffs’ lack of standing.

VII. SEVENTH DEFENSE

The Complaint is barred by the provisions of the Arkansas-Oklahoma Arkansas River Basin Compact.

VIII. EIGHTH DEFENSE

The Complaint is barred by the Right to Farm Statutes codified at ARKANSAS CODE ANNOTATED § 2-4-101 *et seq.* and OKLA. STAT. , tit. 50 § 1.1.

IX. NINTH DEFENSE

To the extent that liability under the Complaint is predicated on the claim that independent poultry farmers are or were the servants, employees or agents of Cal-Maine, all such claims are preempted by the provisions of the Packers and Stockyards Act, 7 U.S.C. § 181, *et seq.*

X. TENTH DEFENSE

The state common law claims of nuisance, trespass and unjust enrichment are precluded by the existence and provisions of the Oklahoma Registered Poultry Feeding Operations Act,

OKLA. STAT., tit. 2 § 10-9.1, *et seq.* and the Oklahoma Concentrated Animal Feeding Operations Act, OKLA. STAT., tit. 2 § 9-201, *et seq.*

XI. ELEVENTH DEFENSE

The Complaint's claim for "cost recovery" under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, is barred by the plaintiffs' status as a potentially responsible party.

XII. TWELFTH DEFENSE

All claims for relief pursuant to the Solid Waste Disposal Act ("RCRA"), 42 U.S.C. § 6972, are barred by plaintiffs' lack of standing to pursue a claim under the citizen suit provisions of that statute.

XIII. THIRTEENTH DEFENSE

All claims for relief pursuant to RCRA are barred because poultry litter used as a fertilizer is not a "solid waste" within the meaning of RCRA.

XIV. FOURTEENTH DEFENSE

This action is barred in whole or in part because plaintiffs failed to provide adequate pre-suit notice in compliance with 42 U.S.C. §6972(a)(1)(B), (b)(2)(A), and 40 C.F.R. §254.3.

XV. FIFTEENTH DEFENSE

All claims are barred in whole or in part because the statutory or regulatory provisions upon which they are based are unconstitutionally void for vagueness or otherwise violate due process.

XVI. SIXTEENTH DEFENSE

The state law claims in the First Amended Complaint are barred under the doctrines of state sovereignty and comity. The claims amount to an impermissible attempt by the State of

Oklahoma to use its statutes and its own common law tort theories of liability to restrict or modify the regulatory authority of the State of Arkansas, and to impose economic sanctions on the defendants with the intent of changing the defendants' lawful conduct in the State of Arkansas. Such claims are barred by the Commerce Clause, the Due Process Clause of the 14th Amendment, and the federalism principles inherent in the structure of the United States Constitution.

XVII. SEVENTEENTH DEFENSE

The common law claims asserted in Counts 4, 6, and 10 of the First Amended Complaint are precluded by Oklahoma's statutory and regulatory programs governing the conduct at issue.

XVIII. EIGHTEENTH DEFENSE

The common law claims asserted in Counts 7, 8, and 9 are barred under the doctrine of primary jurisdiction.

XIX. NINETEENTH DEFENSE

The common law claims asserted in the First Amended Complaint are barred because the State of Oklahoma has failed to exhaust the available and mandatory state administrative remedies which the State of Oklahoma itself has established.

XX. TWENTIETH DEFENSE

Some or all the claims are barred under the doctrines of comparative or contributory fault and/or negligence because to the extent, if any, which the actions complained of have caused any damages or injury to the IRW, the plaintiffs have engaged in acts or omissions which have caused or contributed to those damages or injuries.

XXI. TWENTY-FIRST DEFENSE

The plaintiff's claim for punitive damages is barred by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and by the Constitution of Oklahoma, because the standards for imposing and assessing punitive damages are unconstitutionally vague. In addition, the application of such standards is arbitrary, capricious, and not rationally related to any legitimate governmental interest.

XXII. TWENTY-SECOND DEFENSE

Any award of punitive damages that is not based on the guidelines set forth in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996) and its progeny, including Cooper Indus. Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001), would violate this defendant's rights under the Due Process Clause, the Fourteenth Amendment, and other provisions of the United States Constitution.

XXIII. TWENTY-THIRD DEFENSE

Cal-Maine has no present production or facilities in the Illinois River Watershed ("IRW"), nor did it have any production or facilities in the IRW at the time this action was filed. Accordingly, any claim for injunctive relief against Cal-Maine is moot.

XXIV. TWENTY-FOURTH DEFENSE

For the period of time in which Cal-Maine had operations in the IRW, its operations were on such a small scale that even if those operations affected the IRW in any manner, which is denied, such effects were at most *de minimis*, and caused no injuries of any nature to the IRW.

XXV. TWENTY-FIFTH DEFENSE

Cal-Maine is not associated with or affiliated with any of the other defendants. Cal-Maine has not otherwise acted in concert or combination with any other defendant. The First Amended Complaint improperly attempts to combine Cal-Maine with the other defendants under

the designation, “Poultry Integrators.” Cal-Maine is not responsible for the actions of any of the other defendants herein.

XXVI. TWENTY-SIXTH DEFENSE

Cal-Maine does not, and has never, spread or applied manure in the IRW. The manure produced by Cal-Maine chickens when Cal-Maine had a small presence in the IRW was a safe, legal, and valuable product which various independent contract growers and others obtained as the result of bargain or purchase. On information and belief, those persons used the manure in a legal manner for routine, beneficial, and legal agricultural purposes. The injuries and damages, if any, alleged in the First Amended Complaint have been caused by the acts and/or omissions of third parties over whom Cal-Maine had no control or right to control and for whose conduct Cal-Maine is not legally responsible.

XXVII. TWENTY-SEVENTH DEFENSE

Plaintiffs lack standing to assert some or all of the claims in the Complaint.

XXVIII. TWENTY-EIGHTH DEFENSE

Some or all of the claims asserted in the Complaint are preempted by the Clean Water Act and /or other provisions of federal law.

XXIX. TWENTY-NINTH DEFENSE

Some or all of the claims asserted in the Complaint based upon federal common law fail to state a claim upon which relief can be granted because there is no federal common law that governs the conduct alleged in the Complaint.

XXX. THIRTIETH DEFENSE

The Complaint’s claim for relief pursuant to RCRA is barred because poultry litter used as a fertilizer is not a “solid waste” within the meaning of RCRA.

XXXI. THIRTY-FIRST DEFENSE

The Complaint's claim for relief pursuant to RCRA is precluded by the provisions of the Clean Water Act.

XXXII. THIRTY-SECOND DEFENSE

The Complaint's claims for relief pursuant to RCRA and CERCLA are barred by exemptions and exclusions contained within those statutes.

XXXIII. THIRTY-THIRD DEFENSE

Some or all of Plaintiffs' claims are not actionable under 42 U.S.C. § 6972(b)(2)(c)(ii) and/or (iii).

XXXIV. THIRTY-FOURTH DEFENSE

Some or all of Plaintiffs are not the real parties in interest as to some or all of the claims and damages alleged in the Complaint.

XXXV. THIRTY-FIFTH DEFENSE

Plaintiffs' claims are barred in whole or in part because Plaintiffs have failed to mitigate their alleged damages.

XXXVI. THIRTY-SIXTH DEFENSE

Some or all of Plaintiffs' claims are not amendable to judicial resolution because of the primary jurisdiction doctrine and the authority of the Oklahoma Department of Environmental Quality, the Oklahoma Department of Agriculture, Food and Forestry, other Oklahoma state agencies, the Arkansas Department of Environmental Quality, the Arkansas Department of Health, the Arkansas Forestry Commission, the Arkansas Soil and Water Conservation Commission, other Arkansas state agencies, and the United States Environmental Protection Agency.

XXXVII. THIRTY-SEVENTH DEFENSE

Some or all of Plaintiffs' claims are not amenable to judicial resolution because they present a political question.

XXXVIII. THIRTY-EIGHTH DEFENSE

Some or all of Plaintiffs' claims are preempted by rules or regulations issued pursuant to the authority of the United States of America and/or the State of Oklahoma or the State of Arkansas.

XXXIX. THIRTY-NINTH DEFENSE

Some or all of Plaintiffs' claims are not actionable under the federal and/or state statutes and regulations identified in the Complaint.

XL. FORTIETH DEFENSE

The Plaintiffs do not state a cause of action for nuisance because the Plaintiffs have neither alleged nor suffered a particularized injury.

XLI. FORTY-FIRST DEFENSE

No injunctive relief should be awarded because Plaintiffs have an adequate remedy at law.

XLII. FORTY-SECOND DEFENSE

No injunctive relief should be awarded because Plaintiffs have not suffered irreparable harm.

XLIII. FORTY-THIRD DEFENSE

Cal-Maine expressly reserves the right to raise such additional affirmative defenses as may be established during discovery and by the evidence in this case.

WHEREFORE, Cal-Maine asks that judgment be entered:

1. dismissing the Complaint with prejudice; and
2. awarding Cal-Maine its costs, attorney fees, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ Robert P. Redemann

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2005, a true and correct copy of the above and foregoing documents was sent to the following:

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